

MEMO# 27333

June 25, 2013

Unresponsive Payee Notice Required by Exchange Act Rule 17Ad-17 Must Be a Separate Document

[27333]

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TO: TRANSFER AGENT ADVISORY COMMITTEE No. 48-13
BROKER/DEALER ADVISORY COMMITTEE No. 29-13
COMPLIANCE MEMBERS No. 30-13 RE: UNRESPONSIVE PAYEE NOTICE REQUIRED BY
EXCHANGE ACT RULE 17Ad-17 MUST BE A SEPARATE DOCUMENT

As you may recall, in December 2012, the SEC announced adoption of revisions to Rule 17Ad-17 under the Securities Exchange Act of 1934, which, in part and as required by the Dodd-Frank Act, require “paying agents” to notify “unresponsive payees” of uncashed checks. [\[1\]](#) The Institute’s memorandum summarizing the requirements of this new provision [\[2\]](#) noted that, while the rule mandates no format for the required notice, the Release adopting the rule noted that periodic statements provided by broker-dealers to their customers that include all disbursements will not satisfy the rule’s notice requirement. [\[3\]](#)

Subsequent to adoption of this new requirement, there was uncertainty regarding whether the required notice could be included on documents that are sent to shareholders, such as customer account statements or other routine customer mailings. Please note that the notice to an unresponsive payee required by the rule must be a stand-alone disclosure document. The notice may be sent along with other documents or statements sent to the shareholder, but it must appear on a separate document.

Please also note that the compliance date for this new notice requirement is January 23, 2014 and it only applies prospectively to persons who become missing securityholders after that date. Also, the notice is not required to be sent to any missing securityholder who has established instructions for the paying agent to re-deposit uncashed checks in his or her account as the redeposit will be considered negotiation of the checks

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endnotes

[1] See Lost Securityholders and Unresponsive Payees, SEC Release No. 34-68668, dated January 16, 2013 (the “Release”), which is available at: <http://sec.gov/rules/final/2013/34-68668.pdf>.

[2] See Institute Memorandum No. [26805](#), dated December 24, 2012, which summarizes the revised rule’s requirements.

[3] According to the Release, “[w]hile the Commission recognizes that generally all transactions, including checks, are detailed in brokers’ periodic statements, we do not believe that such all-inclusive statements in their present form would present the kind of focused notifications of uncashed checks that Congress intended in” enacting this requirement in the DFA. Release at p. 25.

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